

August 13, 2019

Mrs. Nancy J. Bozzato, Secretary Treasurer  
Committee of Adjustment  
Town of Pelham  
Fonthill, ON L0S 1E0

**Re: Minor Variance Application A18/2019P**  
**241 Farr Street, Pelham**  
Concession 14, Part of Lot 17; Part 2 on 59R-16004  
**Roll No. 2732 010 018 14018**

The subject land is located on the east side of Farr Street, lying north of River Road, legally described above and known municipally as 241 Farr Street, in the Town of Pelham.

The subject land is zoned 'Agricultural' (A) in accordance with Pelham Zoning By-law 1136 (1987), as amended. The proposed dwelling seeks zoning relief through a minor variance application as follows:

- **Section 7.4 f) "Minimum Side Yard"** seeking 5.5m to the north and south side yard, whereas 9m is required for a dwelling.

#### **Policy Overview**

##### Provincial Policy Statement (PPS), 2014

The Provincial Policy Statement (PPS) designates the subject land within the 'Prime Agricultural Area'. The permitted uses (among others) include: agricultural / agricultural related uses, limited residential development and home occupations. 'Prime Agricultural Areas' are defined as including associated Canada Land Inventory Class 4-7 lands as well as 'Prime Agricultural Lands' (Class 1-3 lands).

##### Regional Official Plan (Consolidated, August 2014)

The Regional Official Plan designates the subject parcel as 'Good General Agricultural Area'.

Policy 5.B.6 states single dwellings are permitted on existing lots of record provided they were zoned for such as of December 16, 2004.

##### Pelham Official Plan, 2014

The local Official Plan designates the subject parcel as 'Good General Agricultural'. Policy B2.1.2 states (among other uses) one single detached dwelling is permitted on a vacant lot of record.

Policy A2.1.2 states the objective of the Official Plan is to make planning decisions that consider the health and integrity of the broader landscape as well as long term cumulative impacts on the ecosystem. Planning decisions should also restrict and regulate land uses which could impact the water quality and hydrological and hydrogeological characteristics of watercourses, aquifers and wetlands.

Policy B2.1.1 states the purpose of the *Good General Agricultural* designation is to protect and maintain land suitable for agricultural production and permit uses which are compatible with agriculture. The subject lands, together with the surrounding rural residential neighbourhood were legally created parcels under the former testamentary devise provisions of the *Planning Act*. As a result, the perimeter of this superblock was essentially taken out of agricultural production and converted to rural-residential use. Single detached residential buildings are permitted uses, *as-of-right* in the Official Plan and Zoning By-law, subject to applicable regulations.

The minor variance application was accompanied by a lot Grading Plan which depicts topography, a septic system and drainage patterns.

Pelham Zoning By-law Number 1136 (1987)

The Town Zoning By-law identifies the subject parcel as 'Agricultural' (A).

Section 7.4 Requirements for dwellings

f) Minimum Side Yard 9m Request = 5.5m (north & south)

The Committee of Adjustment, in Section 45 (1) of the *Planning Act*, may authorize a minor variance from the provisions of the by-law, subject to the following considerations:

Minor Variance Test	Explanation
1. The variance is minor in nature.	Reducing the side yard setbacks appears minor in nature because adequate information is now available to qualify the degree of impact this development may generate, particularly upon neighbouring land during storm events.
2. The variance is desirable for the development or use of the land.	Reducing the side yard setbacks is desirable for the lands because it will encourage the dwelling to be located further away from the septic bed, which is a constraint on such a small rural parcel. Although other alternatives could also achieve the same result, such as a reduced front yard setback or a 2-storey dwelling with a smaller footprint, the applicant has opted for reduced side yard setbacks.
3. The variance maintains the general intent and purpose of the Official Plan.	The requested side yard setback application was recently accompanied by a demonstrated need on the basis that the subject zoning provision is not warranted, causes undue hardship, or is otherwise impossible to comply with (Policy E1.5). The policy objectives of A2.1.2 state planning decisions should restrict & regulate land uses which could impact water quality and hydrological and hydrogeological characteristics of watercourses, aquifers and wetlands. The Region of Niagara has confirmed a

From the Department of



	private sewage system should be able to be sustainably accommodated and a satisfactory Lot Grading & Drainage Plan is provided illustrating drainage along the lot lines, Town Planning staff are of the opinion the variance does not conflict with the policy objectives of the Official Plan.
4. The variance maintains the general intent and purpose of the Zoning By-law.	Reducing the side yard setbacks to accommodate a wider dwelling maintains the general intent of the Zoning By-law, insofar as adequate spatial separation is maintained between the neighbouring parcels.

### Comments

On July 18<sup>th</sup> 2019, a revised notice was circulated to agencies directly affected by the proposed application including internal Town departments (i.e. Public Works, Building, etc.) and all assessed property owners within 60 metres of the property's boundaries.

To date, the following comments have been received:

- Niagara Region Planning & Development Services (August 8, 2019; July 4, 2019)
  - A revised Lot Grading & Drainage Plan was submitted which now shows drainage will be re-directed along the lot lines and the septic system location. The drainage concerns will also be addressed at the time of the septic permit application.
  - No further objections.
- Public Works Department (August 1, 2019; July 3, 2019)
  - Minimum swale slopes shall be 2% in accordance with the Engineering Design Standards.
  - The lot shall have its own independent drainage system to convey overland stormwater without relying on neighbouring properties. The proposed pits at the rear of the lot are not permitted to cross lot lines and must be independent to each lot.
  - An in depth look at the lot grading and drainage is to be conducted at the time the Town is in receipt of the Overall Lot Grading and Drainage Plan. Any and / or all drainage concerns are addressed at that time.
  - If the proposed drainage pits are to act as a French drain, with proper design and installation, then there is no requirement for an outlet. French drains act to slow the overland flow and allow for stormwater to soak into the soil and recharge the ground water table.
  - The applicant must apply for a Driveway Entrance & Culvert Permit(s) prior to gaining driveway access from the Town right-of-way.
  - The applicant must submit a comprehensive Overall Lot Grading & Drainage Plan to the satisfaction of the Director of Public Works.
- Building Department (August 6, 2019; June 27, 2019)
  - Building permit(s) are required prior to construction commencing.

Comments were received from two (2) neighbouring residents which are summarized as follows:

- Are the proposed pits large enough to contain stormwater runoff? Will the pits be shared between lots?
  - Detailed design of the pits will be at building permit stage, and the pits are prohibited to be shared amongst properties unless appropriate approvals are obtained, (i.e. easements).



- Where are the “appropriate drainage outlets”, the Grading Plan references? Will runoff be directed onto adjacent properties? The depression (pond) will be partly covered by the proposed dwelling. Swales and French drains will be insufficient to adequately drain stormwater runoff if the depression is filled-in, this will adversely impact neighbouring properties during storm events.
  - If the pits are properly designed to act as a French drain, then no outlets are required. Drainage shall be conveyed exclusively on the subject land, and not rely on neighbouring properties.
- The water channels that traverse the property are not being maintained on the proposed Grading Plan.
  - This low lying area is not a regulated feature (i.e. tributary) by the NPCA or a Municipal Drain.
- The NPCA may want to provide comment on these properties as it appears within their jurisdiction.
  - The subject lands are located outside of the NPCA’s regulated screening area.
- In regards to the depression (pond) on the subject land, the Site Plan states, “some pooling in extreme conditions”. Neighbours experience perpetual pooling in this location, which increases significantly during heavy precipitation.
  - Historic aerial photography depicts this pond annually.
- Stormwater runoff from the dwelling will impact surrounding properties.
  - Detailed Lot Grading & Drainage Plan will be required along with Regional septic system approval.

### Planning Comments

Planning staff note that the property is 0.28 ha (0.7 ac) in land area, is not farmed and is considered to be a vacant rural lot. The subject land is surrounded by:

- North – Rural residential dwelling
- East – Agricultural
- South – Agricultural / Rural residential dwelling
- West – Rural residential dwellings

The Region of Niagara has now provided supportive comments regarding the appropriateness of the minor variance request and the private sewage servicing capabilities of the property.

The owner has provided additional commentary with his resubmission expressing reasons as to why it is not possible to comply with the Zoning By-law. The Site Plan illustrates a 263 m<sup>2</sup> (2830 ft<sup>2</sup>) house & garage footprint. It appears the owner wishes to build a wider footprint house to match that of much of the existing houses in the neighbourhood, which are similar in width and to maintain a large rear yard amenity area for the residents and for septic system purposes.

Town Planning staff would normally agree with the applicant’s assessment of Official Plan policy in how development should be compatible with existing neighbourhoods. However, given the context and how this neighbourhood has transformed into a mostly rural residential neighbourhood, despite never being planned for such, it remains an agricultural area and the Official Plan policies emphasize that non-agricultural development must be compatible with the agricultural nature of this area (Policy B2.1.1), not the latest residential development. Therefore, Planning staff are of the opinion the need for a wider footprint on

*compatibility* grounds is not that compelling. However, we echo the applicant's sentiment about preserving a large rear yard amenity area and open space for septic system purposes as more appropriate rationale.

Due to the supportive Regional comments regarding the site drainage and septic system design information, Town Planning staff are now in a better position to support the minor variance approval.

Planning Staff is of the opinion that the application now meets all four minor variance tests laid out by the *Planning Act*. The application is consistent with Provincial policies, the Regional Official Plan, and conforms to the general intent of the Town's Official Plan.

Consequently, Planning Staff recommend that Application File Number A18/2019P **be approved**, subject to the following conditions,

**THAT** the applicant,

- Provide a detailed *Lot Grading & Drainage Plan* with the Septic Permit Application and obtain approval of the same, to be issued by the Region of Niagara.

Prepared by,



Curtis Thompson  
Planner, B.URPI

Reviewed by,



Barb Wiens, MCIP, RPP  
Director/ Community Planning & Development